

AMENDED IN SENATE JUNE 14, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1918**

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**Introduced by Assembly Member Montanez**  
**(Coauthors: Assembly Members Dymally, Hancock, and Koretz)**  
**(Coauthor: Senator Kuehl)**

February 10, 2004

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An act to amend Sections 44977, 44983, and 45196 of the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1918, as amended, Montanez. School employees.

Under existing law, when a certificated or classified school employee exhausts all available sick leave and continues to be absent from his or her duties on account of illness or accident for an additional period of 5 school months, the employee during those 5 months receives the difference between his or her salary and the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed.

*Existing law makes these provisions inapplicable to a school district that adopts and maintains in effect a rule whereby a person employed in a position requiring certification qualifications who is absent from his or her duties on account of illness or accident for a period of 5 school months or less receives 50% or more of his or her regular salary during the period of the absence.*

Under existing law, the family temporary disability insurance program provides up to 6 weeks of wage replacement benefits to

workers who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child.

This bill would allow a school employee, in a school district that is not subject to the disability compensation laws, to use up to 6 weeks of the 5-month period during which the employee receives differential pay to take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child.

*The bill would similarly allow a school employee in a school district that is not subject to the disability compensation laws and in which a school employee receives 50% or more of his or her regular salary during an absence for illness or accident of 5 months or less to use up to 6 weeks of that 5 month or less period to take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 44977 of the Education Code is  
2 amended to read:

3 44977. (a) (1) During each school year, when a person  
4 employed in a position requiring certification qualifications has  
5 exhausted all available sick leave, including all accumulated sick  
6 leave, and continues to be absent from his or her duties on account  
7 of illness or accident for an additional period of five school  
8 months, whether or not the absence arises out of or in the course  
9 of the employment of the employee, the amount deducted from the  
10 salary due him or her for any of the additional five months in which  
11 the absence occurs shall not exceed the sum that is actually paid  
12 a substitute employee employed to fill his or her position during  
13 his or her absence or, if no substitute employee was employed, the  
14 amount that would have been paid to the substitute had he or she  
15 been employed. The school district shall make every reasonable  
16 effort to secure the services of a substitute employee.

17 (2) Of the five-month period allowed pursuant to paragraph  
18 (1), up to six weeks may be used to care for a seriously ill child,  
19 spouse, parent, domestic partner, or to bond with a minor child  
20 within one year of the birth or placement of the child in connection  
21 with foster care or adoption. For purposes of this paragraph, a

1 person is seriously ill if the person suffers an illness, injury,  
2 impairment, or physical or mental condition that involves  
3 inpatient care in a hospital, hospice, or residential health care  
4 facility, or continuing treatment or continuing supervision by a  
5 health care provider, as defined in Section 12945.2 of the  
6 Government Code. For purposes of this paragraph, the following  
7 terms have the following meanings:

8 (A) “Child” means a biological, adopted, or foster son or  
9 daughter, a stepson or stepdaughter, a legal ward, a son or daughter  
10 of a domestic partner, or the person to whom the employee stands  
11 in loco parentis.

12 (B) “Domestic partner” has the same meaning as defined in  
13 Section 297 of the Family Code.

14 (C) “Parent” means a biological, foster, or adoptive parent, a  
15 stepparent, a legal guardian, or other person who stood in loco  
16 parentis to the employee when the employee was a child.

17 (D) “Spouse” means a partner to a lawful marriage.

18 (3) Paragraph (2) applies to a public school employer, as  
19 defined in Section 3540.1 of the Government Code, that is not  
20 subject to Part 2 (commencing with Section 2601) of Division 1  
21 of the Unemployment Insurance Code.

22 (b) For purposes of subdivision (a):

23 (1) The sick leave, including accumulated sick leave, and the  
24 five-month period shall run consecutively.

25 (2) An employee shall not be provided more than one  
26 five-month period per illness or accident. However, if a school  
27 year terminates before the five-month period is exhausted, the  
28 employee may take the balance of the five-month period in a  
29 subsequent school year.

30 (c) The governing board of every school district shall adopt a  
31 salary schedule for substitute employees. The salary schedule shall  
32 indicate a salary for a substitute for all categories or classes of  
33 certificated employees of the district.

34 (d) Except in a district the governing board of which has  
35 adopted a salary schedule for substitute employees of the district,  
36 the amount paid the substitute employee during any month shall  
37 be less than the salary due the employee absent from his or her  
38 duties.

39 (e) When a person employed in a position requiring  
40 certification qualifications is absent from his or her duties on

1 account of illness for a period of more than five school months, or  
2 when a person is absent from his or her duties for a cause other than  
3 illness, the amount deducted from the salary due him or her for the  
4 month in which the absence occurs shall be determined according  
5 to the rules and regulations established by the governing board of  
6 the district. The rules and regulations shall not conflict with rules  
7 and regulations of the State Board of Education.

8 (f) This section does not deprive any district, city, or city and  
9 county of the right to make any reasonable rule for the regulation  
10 of accident or sick leave or cumulative accident or sick leave  
11 without loss of salary for persons acquiring certification  
12 qualifications.

13 (g) This section is applicable whether or not the absence from  
14 duty is by reason of a leave of absence granted by the governing  
15 board of the employing district.

16 SEC. 2. *Section 44983 of the Education Code is amended to*  
17 *read:*

18 44983. (a) (1) ~~Section 44977 shall does not apply to any~~  
19 ~~prohibit a school district which adopts and maintains in effect from~~  
20 ~~adopting a rule which provides that when that permits a person~~  
21 ~~employed in a position requiring certification qualifications who~~  
22 ~~is absent from his or her duties on account of illness or accident~~  
23 ~~for a period of five school months or less, whether or not the~~  
24 ~~absence arises out of or in the course of the employment of the~~  
25 ~~employee, he shall receive from receiving 50 percent or more of his~~  
26 ~~or her regular salary during the period of such the absence and~~  
27 ~~nothing in Section 44977 shall be construed as preventing the~~  
28 ~~governing board of any district from adopting any such rule.~~

29 ~~Notwithstanding the foregoing, when~~

30 (2) *Not more than six weeks of the five-month period allowed*  
31 *pursuant to paragraph (1), may be used to care for a seriously ill*  
32 *child, spouse, parent, domestic partner, or to bond with a minor*  
33 *child within one year of the birth or placement of the child in*  
34 *connection with foster care or adoption. For purposes of this*  
35 *paragraph, a person is seriously ill if the person suffers an illness,*  
36 *injury, impairment, or physical or mental condition that involves*  
37 *inpatient care in a hospital, hospice, or residential health care*  
38 *facility, or continuing treatment or continuing supervision by a*  
39 *health care provider, as defined in Section 12945.2 of the*

1 *Government Code. For purposes of this paragraph, the following*  
2 *terms have the following meanings:*

3 (A) “Child” means a biological, adopted, or foster son or  
4 daughter; a stepson or stepdaughter; a legal ward, a son or  
5 daughter of a domestic partner, or a minor to whom the employee  
6 stands in loco parentis.

7 (B) “Domestic partner” has the same meaning as defined in  
8 Section 297 of the Family Code.

9 (C) “Parent” means a biological, foster, or adoptive parent, a  
10 stepparent, a legal guardian, or other person who stood in loco  
11 parentis to the employee when the employee was a minor.

12 (D) “Spouse” means a partner to a lawful marriage.

13 (3) Paragraph (2) applies to a public school employer, as  
14 defined in Section 3540.1 of the Government Code, that is not  
15 subject to Part 2 (commencing with Section 2601) of Division 1 of  
16 the Unemployment Insurance Code.

17 (b) Notwithstanding subdivision (a) if a person employed in a  
18 position requiring certification qualifications is absent from his or  
19 her duties on account of illness for a period of more than five  
20 school months, or when a person is absent from his or her duties  
21 for a cause other than illness, the amount deducted from the salary  
22 due him or her for the month in which the absence occurs shall be  
23 determined according to the rules and regulations established by  
24 the governing board of the district. ~~Such~~ The rules and regulations  
25 shall not conflict with rules and regulations of the State Board of  
26 Education.

27 ~~Nothing in this~~

28 (c) ~~This section shall be construed so as to~~ does not deprive any  
29 district, city, or city and county of the right to make any reasonable  
30 rule for the regulation of accident or sick leave or cumulative  
31 accident or sick leave without loss of salary for persons requiring  
32 certification qualifications.

33 ~~This~~

34 (d) This section shall be applicable whether or not the absence  
35 from duty is by reason of a leave of absence granted by the  
36 governing board of the employing district.

37 SEC. 3. Section 45196 of the Education Code is amended to  
38 read:

39 45196. (a) (1) When a person employed in the classified  
40 service is absent from his or her duties on account of illness or

1 accident for a period of five months or less, whether or not the  
2 absence arises out of or in the course of employment of the  
3 employee, the amount deducted from the salary due him or her for  
4 any month in which the absence occurs shall not exceed the sum  
5 which is actually paid a substitute employee employed to fill his  
6 or her position during his or her absence.

7 (2) Of the five-month period allowed pursuant to paragraph  
8 (1), up to six weeks may be used to care for a seriously ill child,  
9 spouse, parent, domestic partner, or to bond with a minor child  
10 within one year of the birth or placement of the child in connection  
11 with foster care or adoption. For purposes of this paragraph, a  
12 person is seriously ill if the person suffers an illness, injury,  
13 impairment, or physical or mental condition that involves  
14 inpatient care in a hospital, hospice, or residential health care  
15 facility, or continuing treatment or continuing supervision by a  
16 health care provider, as defined in Section 12945.2 of the  
17 Government Code. For purposes of this paragraph, the following  
18 terms have the following meanings:

19 (A) “Child” means a biological, adopted, or foster son or  
20 daughter, a stepson or stepdaughter, a legal ward, a son or daughter  
21 of a domestic partner, or the person to whom the employee stands  
22 in loco parentis.

23 (B) “Domestic partner” has the same meaning as defined in  
24 Section 297 of the Family Code.

25 (C) “Parent” means a biological, foster, or adoptive parent, a  
26 stepparent, a legal guardian, or other person who stood in loco  
27 parentis to the employee when the employee was a child.

28 (D) “Spouse” means a partner to a lawful marriage.

29 (3) Paragraph (2) applies to a public school employer, as  
30 defined in Section 3540.1 of the Government Code, that is not  
31 subject to Part 2 (commencing with Section 2601) of Division 1  
32 of the Unemployment Insurance Code.

33 (b) Except in a district the governing board of which has  
34 adopted a salary schedule for substitute employees of the district,  
35 the amount paid the substitute employee during any month shall  
36 be less than the salary due the employee absent from his or her  
37 duties.

38 (c) Entitlement to sick leave under this section, if any, shall be  
39 considered “entitlement to other sick leave” for the purposes of  
40 computing benefits under the provisions of Section 45192 if the

1 absence is for industrial accident or illness and shall be used after  
2 entitlement to all regular sick leave, accumulated compensating  
3 time, vacation or other available paid leave is exhausted.

4 (d) This section does not apply to any school district that adopts  
5 and maintains in effect a rule pursuant to which a regular classified  
6 employee is once a year credited with a total of not less than 100  
7 working days of paid sick leave, including days to which he or she  
8 is entitled under Section 45191. Those days of paid sick leave in  
9 addition to those required by Section 45191 shall be compensated  
10 at not less than 50 percent of the employee's regular salary. The  
11 paid sick leave authorized under that rule shall be exclusive of any  
12 other paid leave, holidays, vacation, or compensating time to  
13 which the employee may be entitled. This section does not  
14 preclude the governing board from adopting a rule as described in  
15 this subdivision.

